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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,398	12/19/2001	Michael L. White	5058US (01-01-132)	2055

7590

12/02/2003

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Chicago, IL 60606-6402

EXAMINER

CAPRON, AARON J

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 12/02/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/029,398

Applicant(s)

WHITE, MICHAEL L.

Examiner

Aaron J. Capron

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 36-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-38, 43-50 and 55-59 is/are rejected.
- 7) ☒ Claim(s) 39-42 and 51-54 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

### **DETAILED ACTION**

This is a response to the Amendment received on September 15, 2003, in which claims 36-59 were added and claims 1-35 were cancelled. Claims 36-59 are pending.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36-38, 43-50 and 55-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Watts (4,033,588).

Referring to claims 36, 38 and 45, Watts discloses a gaming method comprising determining that a first player has made a wager; determining that a first player has selected one of the game elements from a set of game elements, the one of the game elements known to the first player at the time the one of the game elements is selected; determining that a second player has made a wager; determining that a second player has selected one of the game elements from a set of game elements, the one of the game elements known to the second player at the time the one of the game elements is selected; selecting a winning game element from the set of game elements; determining a game outcome according to the closeness of one of the game elements selected by the first player and the one of the game elements by the second player to the winning game element; and determining a payout according to the game outcome. Two players have the ability to select a plurality of locations on a keno board as their game elements. As each number

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is called, the player determines if the called number corresponds to a player-selected number. If both players select to play six numbers, the first player could have 6 matched numbers while the second player could have 5 matched numbers. The player having the 6 matched numbers would have a bigger payout than the player having 5 matched numbers.

Referring to claim 37, Watts discloses displaying a set of game elements, updating the display of the set of game elements to reflect the one of the game elements selected by the both the first and second players (Figure 1).

Referring to claim 43, Watts discloses that players have the ability to select the same numbers.

Referring to claim 44, Watts discloses that the players have the ability to each have 5 matching numbers and therefore, receive equal payouts.

Referring to claim 46, Watts discloses selecting a winning game element randomly.

Referring to claim 47, Watts discloses repeating the selection of game elements amongst the plurality of players and terminating the repetition according the number of game elements selected. The player picks the option on how many matches the player is going for in a single game of keno.

Claims 48-50 and 55-59 correspond in scope to a gaming method set forth for use of the gaming method listed in the claims above and are encompassed by use as set forth in the rejection above.

***Allowable Subject Matter***

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Claims 39-42 and 51-54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

While the prior art reference of record provides a keno gaming method comprising determining a plurality of players making wagers, determining the plurality of players selecting game elements, determining a game closeness based upon the selected game elements and determining a payout. However, the prior art fails to teach, disclose or suggest a keno gaming method that defines closeness as being mathematical closeness or physical closeness that as claimed in Applicants' invention.

*Response to Arguments*

*36-38, 43-50 and 55-59*

*AJC*

Applicant's arguments with respect to claims ~~36-59~~ have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Seven-Twenty-Seven discloses a card game based upon mathematical closeness, but does not disclose having selecting a winning game element or card.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

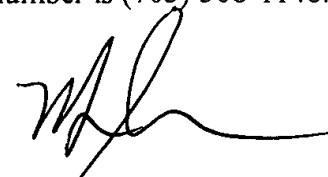
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc



MARK SAGER  
PRIMARY EXAMINER